SUPREME COURT, U. S.

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IN THE

Supreme Court of the United States

October Term, 1967

NO. 788

JAMES D. McCOLLOUGH, *Petitioner*

v.

THE TRAVELERS INSURANCE COMPANY

AND

LEVINGSTON SHIPBUILDING COMPANY,

Respondents

BRIEF OF RESPONDENTS OPPOSING THE PETITION FOR A WRIT OF CERTIORARI

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TABLE OF CONTENTS

	Page
Question Presented	2
Statement of the Case	2
Reasons for Refusing The Writ	3
(1) The Admiralty Extension Act of 1948 did not amend the Longshoremen's and Harbor Workers' Act, to include injuries occurring on docks, piers or wharves and "being engaged in maritime employment" is not controlling where the situs of the injury is a dock, wharf, pier or extension of land.	3
(2) An injury occurring upon the stationary outfitting pier, permanently affixed to land, is an injury upon a dock, wharf, pier or extension of land and is covered by state compensation.	9
(3) Proper Jurisdiction is Within Perimeter of State Compensation Coverage.	18
Conclusion	19

LIST OF AUTHORITIES

CASES	Page
American Export Lines v. Revel, 266 F.2d 82 (4th Cir. 1959)	6, 12, 13
Avondale Marine Ways, Inc. v. Henderson, (1953) 346 U.S. 366, 74 S.Ct. 100, 98 L.Ed. 77	10
Beasley v. O'Hearne, 250 F. Supp. 49 (S.D. W. Va. 1966)	11

CASES Page

Calbeck v. Travelers, (1962) 370 U.S. 114, 82 S.Ct. 1196 7
East v. Oosting, 245 F. Supp. 51 (E.D. Va. 1965) 12, 14, 16, 17
Gulf Oil Corporation v. O'Keefe, 242 F. Supp. 881 (E.D., S.C. 1965) 11
Gutierrez v. Waterman Steamship Corp., (1963) 373 U.S. 206, 83 S.Ct. 1185, 10 L.Ed.2d 297 ..... 7, 8
Hastings v. Mann, 340 F.2d 910 (4th Cir. 1965) Cert. Den. 380 U.S. 963, 85 S.Ct. 1106, 14 L.Ed.2d 153 6
Houser v. O'Leary, 253 F. Supp. 417 (D. Ore. 1966) 16, 17
Interlake Steamship Co. v. Nielsen, 338 F.2d 879 (6th Cir. 1964), cert. den., 381 U.S. 934, 85 S.Ct. 1763, 14 L.Ed.2d 699 ..... 11, 15, 17
Johnson v. Traynor, 243 F. Supp. 184 (D. Md. 1965) 5, 6, 12, 13, 14, 16, 17
Marine Stevedoring Co. v. Oosting, 238 F. Supp. 78 (E.D. Va. 1965) 11
Michigan Mutual Liability Co. v. Arrien, 344 F.2d 640 (2nd Cir. 1965) cert. den., 382 U.S. 835, 86 S.Ct. 80 ..... 11, 14, 16, 17, 18
Nicholson v. Calbeck, 266 F. Supp. 103 (S.D. Tex. 1966) affd. per curiam by opinion rendered October 31, 1967 ____F.2d____ (5th Cir. 1967) 12, 16
O'Keefe v. Atlantic Stevedoring Co., 354 F.2d 48 (5th Cir. 1965) 220 F. Supp. 881 (S.D. Ga. 1963) 6, 9, 12, 14
O'Leary v. Puget Sound Bridge & Dry Dock, 349 F.2d 571 (9th Cir. 1965) 10
State Industrial Commission v. Nordenholt Corp., (1922) 259 U.S. 263, 42 S.Ct. 473, 66 L.Ed. 933 ..... 12, 13
Swanson v. Marra Bros., (1946) 328 U.S. 1, 66 S.Ct. 869, 90 L.Ed. 1045 ..... 7, 12, 13

Page

STATUTES

Admiralty Extension Act, 1946, 46 U.S.C. 740 ..... 3, 4, 5, 6, 7, 8, 9, 12
Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. 901, et seq. 9, 10, 18

MISCELLANEOUS

Hearings on S. 3170, Senate Judiciary Committee 69th Cong. 1st Sess., p. 2 4
1948 U.S. Code Cong. Serv., Vol. 2, pp. 1979-1984 5

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BRIEF OF RESPONDENTS OPPOSING PETITION FOR WRIT OF CERTIORARI

Respondents, The Travelers Insurance Company, and the Levingston Shipbuilding Company, oppose the Petition for a Writ of Certiorari to review the judgment in United States Court of Appeals for the Fifth Circuit entered on August 9, 1967, in the case of The Travelers Insurance Company and Levingston Shipbuilding Company v. R. J. Shea, Deputy Commissioner, and James D. McCollough.

QUESTION PRESENTED

Whether or not, under the facts and circumstances of this case, the accidental injury to James D. McCollough, while working on a stationary outfitting pier, permanently affixed to land, comes within the jurisdiction of the Longshoremen's and Harbor Workers' Compensation Act instead of the Workmen's Compensation Act of the State of Texas.

STATEMENT OF THE CASE

Petitioner, James D. McCollough, was injured as an employee of the Levingston Shipbuilding Company on March 20, 1965, while picking up a sack of sand on Station No. 3 of a stationary, permanently affixed, floating outfitting pier. This pier consisted of floating steel barges tied end to end, approximately 750 feet long in total length. These barges are connected to land with a floating barge 90 feet long and a ramp which is 45 feet by 90 feet. This floating outfitting pier is stationary at both ends and anchored with clusters of pilings, has not been moved in approximately eighteen years, and is permanently affixed to land.

At the time of the accident made the basis of the claim in this suit, the employee, James D. McCollough, and the employer, Levingston Shipbuilding Company, were covered by the Texas Workmen's Compensation Act, and the employer was a subscriber under the terms of said Act. James D. McCollough filed a claim for workmen's compensation benefits with the Industrial Accident Board of the State of Texas and was paid benefits under the terms and provisions of the Texas Workmen's Compensation Act.

The Deputy Commissioner rendered an award on August 13, 1965, by which he awarded disability benefits and medical expenses to Petitioner, James D. McCollough. The Respondents filed suit to enjoin the enforcement of the award under the Longshoremen's and Harbor Workers' Compensation Act in the United States District Court for the Eastern District of Texas, Beaumont Division. From a judgment denying The Travelers Insurance Company's and Levingston Shipbuilding Company's request for a mandatory injunction setting aside the award of the Deputy Commissioner and granting a motion to dismiss on behalf of Deputy Commissioner, the Plaintiffs, The Travelers Insurance Company and Levingston Shipbuilding Company, perfected an appeal to United States Court of Appeals for the Fifth Circuit.

The United States Court of Appeals for the Fifth Circuit rendered an opinion on August 9, 1967, which reversed the decision of the District Court for the Eastern District of Texas and held that the petitioner's remedy was exclusively within the scope of State compensation coverage.

REASONS FOR REFUSING THE WRIT

(1) The Admiralty Extension Act of 1948 did not amend the Longshoremen's and Harbor Workers' Act, to include injuries occurring on docks, piers or wharves and "being engaged in maritime employment" is not controlling where the situs of the injury is a dock, wharf, pier or extension of land.

The petitioners argue that the Admiralty Extension Act of 1948 extended the coverage of Longshoremen's and

Harbor Workers' Act to include injuries occurring on docks, wharves, piers or extensions of land. The claimants would have this court equate the jurisdictional requirement of the Longshoremen's Act of the occurrence of the injury "upon navigable waters" with occurrence of the injury within the "admiralty jurisdiction" of the United States as that jurisdiction is spelled out in the Extension of Admiralty Jurisdiction Act. Neither the language or the history of the Act supports that position, but to the contrary, shows that Congress was aware of and accepted the rule of exclusive State Compensation coverage.

Both the text of the Extension Act and the Committee reports disclose no congressional intent to change the coverage of the Longshoremen's and Harbor Worker's Act. The language of the Extension Act makes it plain that Congress was not re-defining "navigable waters", but was simply extending the admiralty jurisdiction in tort cases only.

It is significant that in enacting the Longshoremen's Act, Congress specifically chose the phrase "navigable waters" in preference to the phrase "admiralty jurisdiction." As originally introduced, the Longshoremen's Act contained a provision covering "any employment performed on a place within the admiralty jurisdiction of the United States except in employment of local concern and of no direct relation to navigation and commerce." (Hearings on S. 3170, Senate Judiciary Committee, 69th Cong. 1st Sess., Page 2;) After much discussion, the phrase "navigable waters" was substituted in preference to "admiralty jurisdiction." Had Congress considered the two phrases identical, there would have been no need for the substitution of one for the other.

Section 740 of the Extension Act provides:

> The admiralty and maritime jurisdiction of the United States shall extend to include all cases of damage or injury, to person or property, caused by a vessel on navigable water, notwithstanding that such damage or injury be done or consummated on land.

The narrow purpose of that Act is disclosed by its second paragraph, which provides:

> "In any such case, suit may be brought in rem or in personam."

Thus, the Extension Act pertains only to judicial remedies and does not affect compensation remedies. A proceeding before the Deputy Commissioner under the Longshoremen's Act is not a suit in rem or in personam. It is an administrative proceeding to obtain compensation without regard to tortious conduct commenced with the filing of a claim with an administrative officer, and terminated with an administrative order. The Extension Act did not attempt to, nor intend to, create new causes of action, *Johnson v. Traynor*, 243 F. Supp. 184 (D. Md. 1965).

The Extension Act is not an express amendment of the Longshoremen's Act. It is completely silent as to the Longshoremen's Act. Similarly, a 1948 amendment of the Longshoremen's Act contains no cross-reference to the Extension Act or to any possible passage of the co-pending Extension Act. (1948 U. S. Code Cong. Serv., Vol. 2, pp. 1979-1984.)

The Bureau of Employees Compensation of the United States Department of Labor which has been charged with administering the Longshoremen's Act since it was passed,

has consistently construed it as not applying to injuries occurring upon a dock, wharf, or pier. In this regard, it is significant to note that the Department of Labor was a party to the instant suit before the United States Court of Appeals for the Fifth Circuit, but has not chosen to perfect an appeal to this Court and apparently is satisfied with the Court's determination of the facts and the law as applied to the instant case.

Similarly, the Courts have rejected the suggestion of expanded coverage. In *American Export Lines v. Revel,* 266 F.2d 82 (4th Cir. 1959) a state compensation award had been accepted for longshoremen's pierside injury. The claimant thereafter brought suit against the shipowner, who defended on the grounds that the claimant had received payments under State compensation acts by reason of which they were statutory employees of the shipowners. The Court expressly held:

> "Since Revel was injured while standing on the dock (an extension of the land), his remedies are restricted to those afforded by local law . . . *This is true even though Congress has embraced such cases within the maritime jurisdiction of the United States.* Extension of Admiralty Act, 46 USCA sec. 640" *Revel,* supra 266
>
> See also *Atlantic Stevedoring Co. v. O'Keefe,* 220 F. Supp. 881 (S.D. Ga. 1963) reversed on other grounds, 354 F.2d 48 (5th Cir. 1965); *Johnson v. Traynor,* 243 F. Supp. 184 (D. Md. 1965); *Hastings v. Mann,* 340 F.2d 910 (4th Cir. 1965) cert. den. 85 S.Ct. 1106, 380 U.S. 963, 14 L.Ed.2d 153.

The Court below correctly assessed the relationship between the Admiralty Extension Act and the Longshoremen's Act.

> "If the Admiralty Extension Act were to measure the jurisdictional perimeter of the Longshoremen's Act, this could have and would have received express Congressional articulation. The reports, debates, colloquies, and other prologues to legislative gestation, as well as the recent judicial decisions, do not indicate any such doctrine of co-extensiveness. *Interlake Steamship Co.*, supra; *East*, supra; *Travelers Insurance Co., et al v. Shea, et al.* ____F.2d____ (5th Cir. 1957) p. 13 — opinion.

Petitioners are also in error in contending that *Calbeck v. Travelers* (1962) 370 U.S. 214, 82 S.Ct. 1196, has changed the law applicable to injuries occurring upon a dock, wharf, pier or extension of land. All *Calbeck* holds is that when an injury occurs upon navigable waters, within the traditional admiralty tort jurisdiction, the fact that the state law might validly apply under the "local concern" doctrine does not exclude the application of the Longshoremen's Act. Since the injuries there concededly occurred upon navigable waters within the traditional admiralty tort jurisdiction, there was no occasion for this Court to rule upon the scope of the statutory phrase "upon the navigable waters of the United States." The Court did, however, quote the Congressional reports showing that Congress did not intend the Act to apply to pierside injuries which were beyond the traditional admiralty tort jurisdiction, and stated that the federal Act's coverage extends "to the limits of navigable waters", 370 U.S. at 123, 125-126. There is no suggestion that this Court was construing the phrase "navigable waters" in any way other than as it had done in *Swanson v. Marra Bros.* (1946), 66 S.Ct. 869, 328 U.S. 1, 90 L.Ed. 1045.

The petitioner's reliance on *Gutierrez v. Waterman Steamship Corp.* (1963) 373 U.S. 206, 83 S.Ct. 1185,

10 L.Ed.2d 297 and other cases of unseaworthiness liability for land injuries, is misplaced. The Court below placed the instant case in the proper perspective:

> It must be remembered that the coverage of the Longshoremen's act is not keyed to the function but is situs-oriented. We are not impressed by the fact that McCollough was injured when assisting in repairing a vessel. We are, however, very impressed by the undisputed evidence, which shows that the situs of the injury to McCollough was a permanently anchored structure which, once built, was an extension of the shore of the Sabine River. *Travelers v. Shea*, ____F.2d ____(5th Cir. 1967) p. 11 — opinion.
>
> The ratio decindendi in those cases interpreting §903 (a) is a beacon to us here. *The coverage of the Act is not keyed to function but has uniformly been situs-oriented.* As our Court held in *O'Keefe v. Atlantic Stevedoring Company*, 5 Cir. 1965, 354 F.2d 48, 50:
>
> > 'The difficult problem is the determination as to the place where the injury occurred. It is the place where the injury occurred that determines whether there is Longshoremen's Compensation coverage.'
>
> *The Act does not cover all harbor workers, or all those working on ships, or those performing services to ships.* These words would be the actuating words if functionalism were to prevail over locus. Congress set out to cover workers not protected by state workmen's compensation laws. . . ." (emphasis supplied) *Travelers v. Shea*, supra, p. 3 — opinion.

The tort of "unseaworthiness" and concepts of "in the service of the ship" arise under the general maritime law and not under a specific enactment such as the Longshoremen's Act. They, unlike the Longshoremen's Act, are within the contemplation of the Admiralty Extension

Act. To contend that the Longshoremen's Act cover *all* harbor workers, *all* those working on ships, and *all* those performing services to ships does violence to Congressional intent and uniform judicial interpretation. Situs of injury, rather than abstract concepts of maritime function and "being engaged in maritime employment", is determinative of the petitioners' remedy. *O'Keefe v. Atlantic Stevedoring Company,* 354 F.2d 48 (5th Cir. 1965).

(2) An injury occurring upon the stationary floating outfitting pier, permanently affixed to land, is an injury upon a dock, wharf, pier or extension of land and is covered by State Compensation.

The entire evidence of probative force in this record is that any injury to the plaintiff on March 20, 1965, was sustained on a dock, wharf, or pier, which was stationary and permanently affixed to land, and not upon navigable waters of the United States, and, therefore, not within the meaning and coverage of the Longshoremen's and Harbor Workers' Compensation Act. The decision of the United States Court of Appeals for the Fifth Circuit agreed with this position and the Respondents submit that the opinion should be affirmed as it correctly states the existing law as it applies to the facts of the instant case.

Title 33 U.S.C. §903(a) defines the coverage and scope of the Longshoremen's and Harbor Workers' Act:

> "Compensation shall be payable under this chapter in respect of disability or death of an employee, but only if the disability or death results from an injury occurring upon navigable waters of the United States

> (including any dry dock) and if recovery for the disability or death through Workmen's Compensation proceedings may not validly be provided by state law."

The interpretation of this provision by the Courts has created the "twilight zone" to demark the scope and extent of the Longshore Act, i.e., whether federal or state compensation laws shall apply.

The cases in this area can be categorized by situs of the injury as follows:

(a) Injuries on dry docks—either floating or graven and marine railways, which the Courts have held generally to be within the coverage of the Longshore Act. *Avondale Marine Ways, Inc. v. Henderson* (1953) 346 U.S. 366 S.Ct. 100, 98 L.Ed. 77. One recent case has departed from the trend of the Courts of including marine railways within the parenthetical phrase "any dry dock" and correctly imposed a limit to further enlargement of longshore coverage. *O'Leary v. Puget Sound Bridge & Dry Dock Co.*, 349 F.2d 571 (9th Cir. 1965). This decision affirmatively indicates a limit to the outer boundaries of the Federal Compensation Act and a healthy vitality of the "twilight zone", i.e., that there remains a valid area to which state compensation benefits can and should be applied.

The court below correctly determined this issue:

> Appellees would have us liken this floating outfitting pier to a dry dock or to the land alongside a marine railway, since the pier can be used to repair a ship. Thus, they urge that we uphold the Deputy Commissioner's award. We have not, however, dealing with a dry dock or marine railway. A dry dock functionally

> as well as nautically is different from a floating barge. A dry dock lifts or shifts the ship. If it is to be a marine railway, it is hoisted upon land. If it is to be a dry dock, it submerges or fills with water. This floating barge does neither. . . ." *Travelers v. Shea,* ____F.2d____ (5th Cir. 1967) p. 11 — opinion.

(b) Those exceptional cases of the nature of *Interlake Steamship Company v. Nielsen,* 338 F.2d 879 (6th Cir. 1964) cert. den. 381 U.S. 934 and *Michigan Mutual Liability v. Arrien,* 344 F.2d 640 (2nd Cir. 1965) cert. den., 382 U.S. 835, which case their holdings allowing recovery upon isolated factual situations where injuries or death occurred in, upon, or above the waters and not upon the dock, pier or wharf.

Cases where workmen have fallen from docks, barges, piers or cat walks into navigable water and drowned as a result have followed the pattern established by *Interlake,* supra. *Gulf Oil Corporation v. O'Keefe,* 242 F. Supp. 881 (E. D. S. C. 1965); *Marine Stevedoring Corporation v. Oosting,* 238 F. Supp. 78 (E. D. Va. 1965); *Beasley v. O'Hearne,* 250 F. Supp. 49 (S. D. W. Va. 1966). It is argued by this Respondent that the *Interlake Steamship Company* line of cases is inapplicable to those fact situations where the injury occurs on a structure permanently used as a dock, wharf, or pier.

> This pier does not dwell in a penumbra, for the plethora of cases safely navigates us, by buoys and soundings, to land; that is, to the law governing injuries occurring on piers, wharves, or similar structures. We have no unique or exceptional factual situation before us. *Travelers v. Shea,* ____F.2d____ (5th Cir. 1967) P. 10-opinion.

(c) Those cases involving injuries on structures such as wharves, piers, and docks affixed permanently to shore traditionally have been held to be extensions of land and any remedies for injuries occurring on such structures have been held to be restricted to those afforded by local law—this despite the fact that the injured employee was employed by one who was subject to the Longshoremen's Act and was injured while loading, unloading, or otherwise concerned with the vessel. *Swanson v. Marra Brothers* (1946), 328 U.S. 1, 66 S. Ct. 869, 90 L. Ed. 1045; *State Industrial Commission of State of New York v. Nordenholt Corporation* (1922), 259 U.S. 263, 42 S. Ct. 473, 66 L. Ed. 933; *American Export Lines, Incorporated v. Revel*, 266 F.2d 82 (4th Cir. 1959); *O'Keefe v. Atlantic Stevedoring Company*, 354 F.2d 48 (5th Cir. 1965); *Nicholson v. Calbeck*, 266 F. Supp. 103 (S.D. Tex. 1966) affd. per curiam by opinion rendered October 31, 1967, ____F.2d____ (5th Cir. 1967); *East v. Oosting*, 245 F. Supp. 51 (E.D. Va. 1965); *Johnson v. Traynor*, 243 F. Supp. 184 (D. Md. 1965).

In the *Nordenholt* case, supra, decided prior to the enactment of the Longshoremen's Act, the Supreme Court of the United States clearly held that an injury incurred by a longshoreman while engaged in unloading a vessel lying in navigable waters, who slipped and fell on dock, was a land injury, and, therefore, the recovery for such injury was covered by the state local compensation act, and not by general maritime law.

After enactment of the Longshoremen's Act, the Supreme Court of the United States reaffirmed the principle set out in the *Nordenholt* case, and adhered to it without deviation in *Swanson*. Eleven years after enactment of extension of Admiralty Jurisdiction Act of 1948, the Court

of Appeals for the 4th Circuit clearly and unmistakably stated in the *Revel* case, supra, that the *Nordenholt-Swanson* principle was still the law. Revel, a stevedore, was working on a pier when a load of drums fell onto the pier injuring him.

> "Since Revel was injured while standing on the dock (an extension of land), his remedies are restricted to those afforded by local law." *American Export Lines, Incorporated v. Revel,* 256 F.2d 82, 84 (4th Cir. 1959).

In *Johnson v. Traynor,* 243 F. Supp. 184 (D. Md. 1965), the claimants were engaged in loading drafts of steel into a vessel afloat in navigable waters from a railroad car on the surface of the pier. Both men were assigned and stationed in a railroad car. One such draft, while being lifted into the hold of the vessel, swung back, struck Klosek, and propelled him headfirst out of the gondola onto the pier. Johnson was pinned by the same draft against the gondola car. The pier on which the accident took place is permanently affixed to land, and its 600-foot surface extends over navigable waters.

> "In contrast to the myriad of cases holding that wharves, pilings, piers and like structures are extensions of land, *not one case has been cited by the claimants holding, or even suggesting, that a pier or similar structure could be considered not as being an extension of land but rather as being upon navigable waters.* Accordingly, this court holds that the High Pier at the Bethlehem Steel Plant at Sparrows Point is an extension of land and that the death and injury occurring thereon did not occur 'upon the navigable waters of the United States.' " 243 F. Supp. at page 188 (Emphasis supplied)

The companion cases of *East v. Oosting* and *Avery v. Oosting*, 245 F. Supp. 51 (E.D. Va. 1965), involved fact situations very similar to that of the *Johnson* and *Klosek* cases. In the *East* case, the petitioner was employed as a cargo checker upon a pier which projected out over water for a distance of 1,328 feet. The pier was supported by piles sunk into the river bed and was attached and connected to land. On the surface of the pier, East was struck on the leg by a bale of wool which had fallen off a forklift.

In the *Avery* case, the petitioner was employed as a longshoreman and was working in an open type of railroad car on the surface of a pier, hooking up logs. The claimant was struck by logs being lifted from the railroad car by the ship's gear. The pier is attached to land at one end and extends outward over the water of the Elizabeth River, thereby becoming an extension of land. In denying benefits under the Federal Longshoremen's and Harbor Workers' Compensation Act, the Court said:

> A wharf or pier is usually built on pilings over what was navigable water. When the structure is completed, the water over which it is built is permanently removed from navigation as if the structure had in the first instance been built of land. *East v. Oosting*, 245 F. Supp. 53, 54, citing *Michigan Mutual Liability Company v. Arrien*, 344 F.2d 640 (2d Cir. 1965), cert. den. 382 U.S. 835.

In *O'Keefe v. Atlantic Stevedoring Company*, 354 F.2d 48 (5th Cir., 1965), this Court considered a "dock" case with unique facts and causation of injury. In that case, a longshoreman was lifted from the dock by the gear of the ship, and was off the dock suspended by the ship's

boom. He was carried, head down, up and out from the dock. The winch operator, alerted by other employees, stopped the winch and the longshoreman dropped into the water between the dock and the vessel. When taken from the water he was dead. His skull had been fractured, but it was ascertained that the cause of death was drowning.

This Respondent would submit that the language of this decision places this case within the *Interlake Steamship* line of cases. It is, therefore, distinguishable from the instant case:

> "The difficult problem is the determination as to the place where the injury occurred. *It is the place where the injury occurred that determines where there is longshoremen's compensation coverage. If the ship's boom had swung over the dock striking and causing the death of Curry, we would not be able to find a basis for recovery under the Act. The place of the injury would have been the dock.* It is true that when the causal chain of events commenced, Curry was upon the dock and not upon navigable waters. But the beginning of the causal sequence was the lifting of Curry from the dock by the metal band suspended from the ship's boom. The boom was a part of the ship. Curry was lifted from the dock by the gear of the ship *and was, within the meaning of the Act, suspended from the ship. He was off the dock and upon navigable waters when injured,* and that is true whether his head struck the dock as he was lifted, or whether he struck the ship or the dock while swinging from the boom or after he was dropped. We are firmly of the view that Curry sustained his injury over navigable water." *Atlantic Stevedoring Company,* 354 F.2d at page 50 (Emphasis supplied).

Although the Court upheld the award, strong reservations were expressed that such an award could not have

been sustained if the place of the injury had been the dock. The language of this decision makes it apparent that the Courts intend to preserve traditional protection of injuries on docks, wharves, piers, and similar structures regarded as extensions of land for state compensation laws.

In the recent case of *Houser v. O'Leary*, 253 F. Supp. 417 (D. Ore. 1966), it was held that a longshoreman who fell over backwards from a railroad car onto the pier was not injured upon navigable waters. The pier ran approximately 1,100 feet along the river and extended on pilings 34 feet over the river.

> "Houser's argument has been uniformly rejected, most recently in an opinion by the Honorable Walter E. Hoffman, an able and distinguished trial judge from the Western District of Virginia, Norfolk Division. *East v. Oosting*, 245 F. Supp. 51 (W.D. Va 1965). See also *Johnson v. Traynor*, 243 F. Supp. 184 (D. Md. 1965). Cf. *Michigan Mutual Liability Co. v. Arrien*, 344 F.2d 640 (2 Cir. 1965). *These cases also reject the contention that the water under a pier is navigable within the meaning of the Act.*" *Houser v. O'Leary*, 253 F. Supp. 418 (Emphasis supplied).

This same result was also reached in the recent case of *Nicholson v. Calbeck*, supra, where the deputy commissioner had found as a fact that the waters underneath the pier in question were freely navigable by small crafts.

James McCollough was injured while working upon a 750-foot stationary floating pier which had been anchored to the bottom of Sabine River by clusters of piling for eighteen years. Its permanent home was in the water.

Neither water nor ships can go over the top of it. It does not submerge nor fill with water, i.e., function as a dry dock. A vessel or ship cannot go completely around it or under it. It is not hoisted upon land, i.e., function as a marine railway. The outfitting pier is not removed from the water periodically but remains permanently affixed to land. It is not in the nature of a "skid", nor easily removable from its location. This Respondent would urge that the waters below the 750-foot long outfitting pier were completely removed from navigation. *Michigan Mutual Liability Company v. Arrien,* supra.

The Bethlehem Steel high pier at Sparrows Point, Maryland, in the *Johnson* and *Klosek* cases, supra, extended out over and above navigable tidal waters for some 600 feet from shore. In *Avery,* supra, 1,000 feet; *East,* supra, 1,328 feet; *Houser,* supra, 34 feet. None of these cases emphasized how far the pier, dock or wharf extended over navigable waters. No distinction was made based on distance over water. All of these decisions focused primary concern on established precedent that a pier is an extension of land, that the waters beneath such a permanent structure are removed from navigation, and that, therefore, any injury upon a pier, dock or wharf is not compensable under the Longshore Act because it did not occur on navigable waters. These wisely-reasoned opinions were determinative of the result reached in the United States Court of Appeals for the Fifth Circuit.

James McCollough was not injured while working upon a drydock or marine railway within the meaning of the phrase "any drydock." He did not fall from the outfitting pier and suffer injuries in, upon, or above navigable waters within *Interlake Steamship Co. v. Nielsen,* supra, and its

progeny. He was not working upon a temporary, removable staging or skid. He was not injured as a result of being suspended by ship's gear, or while working upon or crossing a gangplank. The undisputed evidence shows the situs of the injury to be a permanently anchored structure or pier which was affixed to land, and the water thereunder removed from navigation.

> "The water under piers and wharves is, thus, substantially withdrawn from navigation; that under ships and gangways which occupy the space only temporarily, is not." *Michigan Mutual Liability Company v. Arrien,* 344 F.2d 640, 644 (2 Cir. 1965), cert. den. 382 U.S. 835.

(3) Proper jurisdiction within perimeter of State Compensation Coverage.

The effect of Title 33 U.S.C.A. §901 et seq. is to exclude from the jurisdiction of the Longshoremen's and Harbor Workers' Act injuries occurring on docks, wharves or piers permanently attached to land as these structures are validly covered by the state Workmen's Compensation Act. In the instant case, a claim was made under the Texas Workmen's Compensation Act before the Industrial Accident Board. That Board acquired jurisdiction, and money was paid to James B. McCollough under the terms and provisions of the Texas Workmen's Compensation Act. The Longshoremen's and Harbor Workers' Act does not apply if the state may afford compensation through a valid state act. The clear purpose of the Longshore Act is to give the states the first opportunity to compensate the employees for injuries through their state Workmen's Compensation Act where this may be validly done. The states are limited in extending or affording coverage to

employees injured on navigable waters where the work is of a maritime nature. This limitation or restriction would not apply to the instant case as the injury undisputedly occurred on a dock, wharf, or pier, permanently attached to land and thus an extension of land.

CONCLUSION

For the foregoing reasons, the petitioners' application for Writ of Certiorari should be, in all things, denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

A copy of the foregoing Brief of Respondents was mailed to the Hon. Ward Stephenson, Stephenson Building, Orange, Texas, Attorney for Petitioner, James D. McCollough, on the 5 day of Dec., 1967.

Louis Nelson